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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 924 OF 2004

The Commissioner of Income Tax ... Appellant

Versus

M/s. Rishiraj Merchandise Ltd. ... Respondent

Mr. Vimal Gupta for Appellant.

Mr. J.D. Mistry with Mr. Raj Darak for Respondent.

CORAM: F.I. REBELLO &
J.P. DEVADHAR, JJ.
DATED: OCTOBER 15, 2007

P.C.

. The appeal has been preferred by the Revenue on the following question :

> "Whether on the facts and in the circumstances of the case and in law, the Hon'ble Tribunal erred in confirming the order of CIT(A) and holding that the payment of badla charges amounting to Rs.9,12,500/- is not a speculation loss and further in directing the A.O. to include the same in the value of closing stock of shares whereas the A.O. had given valid reasons for treating it as speculation loss?"

. Section 43(5) which defines speculated transactions reads as under:

> ""Speculative transaction" means a transaction in which a contract for the purchase or sale of any commodity, including stocks and shares, is periodically or ultimately settled otherwise than by the actual delivery or transfer of the commodity or scrips."

. Section 73(1) relevant portion of which reads as under :

> " Any loss, computed in respect of a speculation business carried on by the assessee, shall not be set off except against profits and gain,s if any, of another speculation business"

. in the instant case, against the order of the Assessing Officer, an appeal was preferred by the respondent herein before the Commissioner (Appeals). The Commissioner (Appeals) noted that the transaction or purchase of shares was for the settlement period No. 23. As the payment was not made, the sale was deferred to settlement No. 24. The regulations of the Stock Exchange provides that

in case where the payment is deferred, the purchaser has to pay carry forward charges which are commonly known as Badla charges.

. Considering the facts on record, the Commissioner (Appeals) noted that the transaction was completed in Settlement No. 24 and the delivery was effected by paying the contractual price plus badla charges. In other words, there was payment and transfer as contemplated by section 43(5). The assessee sold the shares in the same financial year and incurred a loss and claimed the same as business loss. The Commissioner (Appeals) held on these facts the A.O. was not justified in considering the payment of Badla charges amounting to Rs.9,12,500/- as speculative loss and not considering the same as cost of shares.

. In the appeal preferred, the appellate authority concurred with the finding of fact recorded by the Commissioner (Appeals).

. Having considered the controversy, in our opinion, factually there has been a finding recorded that what has been paid are badla charges in respect of the very same transaction. We have earlier considered the provisions of law. Badla charges are payable based on the regulation of the B.S.E. on

account of the buyer postponing the date of payment. The effect is that on the date of payment and delivery of shares, he has to pay apart from the share price payable when he had ordered purchase also the badla charges when he takes delivery. Such a transaction and the loss of payment cannot be said to be a speculative loss. Considering the above, in our opinion, the issue of law does not arise. Hence appeal disposed of.

(J.P. DEVADHAR, J.) **(F.I.REBELLO, J.)**